

TO: The Honorable Mike Nofs, Chair, and
Members of the Energy & Technology Committee

FROM: Members of the Lansing City Council and
Ingham County Board of Commissioners

DATE: June 13, 2005

RE: **Senate Bill 522 (McManus)**

Dear Chairman Nofs and Committee Members,

We, as elected officials of the Lansing City Council and the Ingham County Board of Commissioners, are writing to express our grave concerns and opposition to Senate Bill 522 (McManus). Our city's struggle with the Wolverine Pipe Line Company resulted in a Supreme Court case that we won, and that this bill now aims to reverse. Nevertheless, SB 522's effects – and its flaws – will extend way beyond Lansing and Wolverine. *The biggest problems with this legislation are:*

1. **Responsibility for Public Health and Safety.** The bill would change statutory language that currently serves an important purpose in the protection of public health and safety. Local units of government have the primary responsibility to protect the public health and public safety of their communities, including in particular their public water supplies. The current statute appropriately serves to balance the responsibility of local units of government regarding local public health and safety, with the regulatory responsibility of the state regarding energy accessibility and rates.
2. **SB 522 violates the Michigan Constitution.** Local consent in such cases is a constitutionally guaranteed right. This bill would violate Article 7, Section 29 of the Michigan Constitution, which states:

*No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, **without the consent of the duly constituted authority of the county, township, city or village**; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.*

3. **Risks of Accidental and/or Intentional Damage.** The question of whether or not it's good public policy to locate liquid petroleum pipelines in the rights-of-way of Michigan's busiest highways warrants public discussion and a thorough study of potential risks from both accidental damage and intentional damage. Locating a pipeline on a highway easement may decrease the pipeline's likely exposure to certain types of third party activity (namely excavation by residential or commercial developers) but it will increase the pipeline's likely exposure to *other types* of third party activity including vibration. An average of 40,500 vehicles per day travel on the section of I-96 at issue in the Lansing case. Also, maintenance and construction activities using heavy equipment take place regularly on highways and on highway rights-of-way as roads get repaired, widened or replaced.
4. **Environmental Justice Issues.** The bill attempts to force the implementation of a unjust decision made by the Michigan Public Service Commission in 2001-02: a decision that would discriminate against racial minorities and low income persons, in favor of persons who were able to exert greater and more direct influence on that small group of decision-makers. (Additional data on this issue is available if you are interested.) Senate Bill 522 will also pave the way for further instances of environmental discrimination in the future. If decisions like these are allowed to be made solely at the highest levels of government, then it is likely that only those with the greatest power and influence on the highest levels of state and federal government will have their voices heard.

In our case, Mayor of the City of Lansing, City of Lansing & Ingham County Commissioner Lisa Dedden v. Michigan Public Service Commission & Wolverine Pipe Line Company, we argued that Wolverine's plan to build a liquid petroleum pipeline through south Lansing along the I-96 easement would place the pipeline too close to too many densely populated neighborhoods; a congested and growing business district; community recreational facilities including swimming pools; and at least one sizable day care center. Approximately 9,000 Lansing residents live in the densely-packed neighborhoods consisting of homes, apartment buildings, and manufactured housing communities directly adjacent to I-96. In some cases, the homes or buildings in which our constituents live are located less than 100 feet from the edge of the I-96 easement.

Central also to our concerns was that Wolverine's proposal would construct the pipeline immediately alongside our community's public water wells, and as such would place at risk the primary water supply upon which more than 200,000 Mid-Michigan residents depend.

Our concerns were formed on the basis of careful study and volumes of expert testimony. We sought and received recommendations from both independent experts and experts within our city fire department, Lansing Board of Water & Light, and planning department. Contrary to assertions made by Wolverine's spokespersons and proponents of SB 522, we have never argued that the industry should just use tanker trucks instead of pipelines. Rather, we have argued that the relative risk-benefit analysis in deciding where liquid petroleum pipelines should be located dictates that liquid petroleum pipelines should not be built through densely populated areas or on top of public water supplies.

In withholding our city's consent to Wolverine's proposal, we were carrying out our constitutional duty as local elected officials to protect the health, safety and welfare of the residents of our community, today and for years to come. Utility companies and the Public Service Commission have, as their primary concern, energy accessibility and costs. It is local elected officials who have, as our primary concern, the health and safety of our communities. Please do not remove this balance of authority and responsibility that has served us well for years.

We ask that you please give due consideration to the concerns set forth above, and that you please oppose SB 522, or at minimum that you support an amendment to allow local units of government to withhold consent in cases in which we as local units have identified risks to the health and safety of our communities.

Proponents of SB 522 argue that the law must now be changed to remove any requirement for local consent because, after years of the current law's requirement for local consent, one community has exercised this power and decided to withhold consent from a particular proposal. Now that one Michigan community has withheld consent - the bill's proponents argue - communities across the state from this point on will withhold consent from any and all utility projects for arbitrary and capricious reasons, or at best, in a dishonest effort to gain concessions from a company proposing such a project.

The efforts of Lansing's local elected officials in opposing Wolverine's proposal to build its pipeline through south Lansing were neither of those. As described in more detail above, our decision to withhold our city's consent was made on the basis of careful study and volumes of expert testimony as set forth in a series of hearings at the local level, and subsequently in the course of the lawsuit that SB 522 now seeks to overturn.

At a minimum, we urge you to support an amendment to SB 522 which would retain the authority of local units of government to withhold consent in cases such as ours in which our decision is supported

with expert testimony. We would support an amendment to place in this statute a requirement that a local unit of government "may not withhold its consent for reasons that are arbitrary or capricious." Such an amendment would directly address the stated fears of pipeline companies and other utilities that local units might otherwise begin to use the result of Lansing's Wolverine Pipe Line case to arbitrarily withhold consent for projects in the future, while preserving the authority of local communities to exercise a necessary role in protecting the health and safety of our local communities.

Sincerely,

Victor Celentino

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